

**THIRD AMENDMENT TO AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND BURKE, WILLIAMS & SORENSEN, LLP**

**THIS AMENDMENT** is entered into this 15th day of November, 2016, by and between the City of Milpitas, hereinafter "City," and Burke, Williams & Sorensen, LLP, hereinafter "Burke." City and Burke may be jointly referred to herein as "the parties."

Recitals:

Whereas, on February 3, 2015, the parties entered into a written Agreement for Legal Services (the "Agreement"), with a maximum compensation amount payable to Burke of \$50,000.00; and

Whereas, on August 4, 2015, the parties entered into the First Amendment to the Agreement ("First Amendment"), which provided for additional legal services work to be performed by Burke for additional compensation of \$120,000.00; and

Whereas, on March 15, 2016, the parties entered into the Second Amendment to the Agreement, which provided for additional legal services to be performed by Burke for additional compensation of \$35,000.00; and

Whereas, the parties wish to further amend the Agreement as set forth below.

NOW, THEREFORE, **IT IS HEREBY AGREED** as follows:

1. The services to be performed under the Agreement are hereby amended by the addition of further and continuing legal services as set forth in the Scope of Work for Third Amendment to Legal Services Agreement Between City of Milpitas and Burke, Williams & Sorensen, LLP, attached hereto as **Exhibit A** ("Scope of Work for Third Amendment").
2. The heretofore combined total maximum compensation amount provided for in Section 3 of the Agreement, and Section C of Exhibit B to the Agreement, entitled "Compensation" and in the First and Second Amendments to the Agreement is \$205,000.00. This Third Amendment shall further amend the combined total maximum compensation amount by the addition of \$35,000.00, for a new combined, total maximum amount of \$240,000.00.
3. All other terms and conditions remain unchanged.

APPROVED BY:

CITY OF MILPITAS

BURKE, WILLIAMS & SORENSEN, LLP

By: \_\_\_\_\_  
Thomas C. Williams, City Manager

By: \_\_\_\_\_  
John Welsh, Managing Partner

## **EXHIBIT A**

### **SCOPE OF WORK FOR THIRD AMENDMENT TO LEGAL SERVICES AGREEMENT BETWEEN CITY OF MILPITAS AND BURKE, WILLIAMS & SORENSEN, LLP**

1. **ADDITIONAL \$35,000 TOWARD THE FOLLOWING LEGAL SERVICES**
  - a. Meet with the City Council on October 18, 2016 for closed session discussion of status regarding Milpitas' pending appeal of the Planned Development Permit for the Newby Island Landfill expansion ("PD Permit");
  - b. Correspond and coordinate with City staff, third party landfill odor experts (e.g.; Paul Miller and/or Michael Ratte of RCH Group and George Savage of CalRecovery Incorporated), citizen groups, elected officials and regulatory agencies; conduct factual and legal research and prepare supplemental letter(s) to San Jose Planning Commission ("SJPC") responding to San Jose Planning Staff's report and related Odor Study in support of Milpitas' appeal of PD Permit and attend the SJPC's continued hearing on Milpitas' appeal held on 10/26/16, which was further continued to 12/9/16;
  - b. Continue responsibility for challenge to/appeal of PD Permit, including but not limited to: review and analysis of any additional reports and/or information that the San Jose Planning Staff may make available regarding Milpitas' appeal of the PD Permit or the Odor Study; coordination and consultation with regulatory agencies, third party landfill odor consultants, Milpitas staff, citizen groups and/or elected officials; preparation of further written submission(s) to the SJPC in support of Milpitas' appeal of the PD Permit as directed by the City Council and City Attorney; attend and provide oral testimony at the continued SJPC meeting on 12/9/16; and the potential preparation/filing of an environmental appeal of the SJPC decision on Milpitas' appeal of the PD Permit to the San Jose City Council ("SJCC") and attendance at the SJCC hearing on such environmental appeal per direction from the City Council and City Attorney.

**City of Milpitas, California  
BUDGET CHANGE FORM**

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:	100-910-4640	35,000	100-120-4237	35,000
<input checked="" type="checkbox"/> Budget Appropriation				
<input type="checkbox"/> Budget Transfer				

**Approve Amendment No. 3 to the Agreement with Law Firm of Burke, Williams & Sorensen, LLP, for Legal Services Regarding Elimination of Odor (Staff Contact: Christopher Diaz, 408-586-3040)**

**Background:** Since 2011, the City has been engaged in efforts opposing the expansion of the Newby Island landfill. At Council direction the City Attorney's Office conducted a nation-wide search to find an attorney firm to advise on all potential means by which to eliminate the offensive odors plaguing the community. Burke, Williams & Sorensen was selected to advise and represent the City regarding the odor problem.

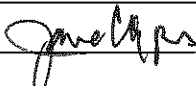
This is the Third Amendment to the current contract to continue with necessary legal and associated representation related to the odor nuisance issues involving the Newby Island Landfill. The scope of services included in the amendment to continue with legal services to abate the odor nuisance is attached.

**Fiscal Impact:** The budget to fund the Third Amendment to the current contract is a not-to-exceed amount of \$35,000. If approved, the funding will be transferred from the contingency reserve account into the City Attorney's budget.

**Recommendations:** Approve the Third Amendment to the current Agreement with Burke, Williams and Sorensen for Legal Services regarding elimination of odors and direct the City Manager to sign the Third Amendment.

☒ Check if City Council Approval required.

**Meeting Date:** November 15, 2016

<b>Requested by:</b>	Christopher Diaz, City Attorney	<b>Date:</b>
<b>Reviewed by:</b>	Interim Finance Director: 	<b>Date:</b> 11/4/16
<b>Approved by:</b>	City Manager:	<b>Date:</b>
<b>Date approved by City Council, if required:</b>		<b>Confirmed by:</b>